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Application No.: 10/603,522

Inventor(s): Tsunetoshi Miura et al.

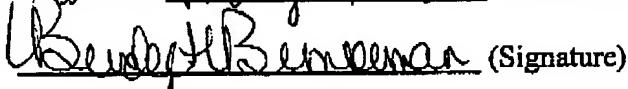
Filed: June 25, 2003

Docket No.: AA597

Confirmation No.: 4100

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/603,522  
Inventor(s) : Tsunetoshi Miura  
Filed : June 25, 2003  
Art Unit : 3761  
Examiner : Melanie Jo Hand  
Docket No. : AA597  
Confirmation No. : 4100  
Customer No. : 27752  
Title : ABSORBENT ARTICLE HAVING A GRAPHIC  
VISIBLE THROUGH BODY CONTACTING SURFACE

APPEAL BRIEF

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir,

This Brief is filed pursuant to the appeal from the U.S. Patent and Trademark Office decision of 14 December, 2005. A timely Notice of Appeal was filed on 8 March, 2006.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1 to 14 are pending in the present application.

Claims 1 to 14 are rejected.

Claims 1 to 14 are appealed.

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A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

The following amendments were filed on 25 June, 2003 in the PRELIMINARY AMENDMENT UNDER 37 C.F.R. §1.115.

Claims 1 and 2 were amended to place in proper form.

Claims 3, 4, 8, 10, and 14 were amended to be dependent on Claim 1.

Claims 5, 6, and 7 were amended to depend from Claim 3 so to have proper antecedent basis.

The following amendments were filed on 20 September, 2005 in the AMENDMENT AFTER 1<sup>ST</sup> OFFICE ACTION UNDER 37 C.F.R. §1.111(c).

Claims 1, 2, 8 and 14 were amended to provide antecedent basis for certain limitations within the claims.

Claim 12 was amended to remove exemplary language from the claim.

SUMMARY OF CLAIMED SUBJECT MATTER

The invention is directed to an absorbent article, which is preferably a sanitary napkin or a pantiliner, comprising: a body contacting layer (FIG. 2, Ref. No. 30); a garment contacting layer (FIG. 2, Ref. No. 40); and an absorbent core (FIG. 2, Ref. No. 50) disposed between the body contacting layer and the garment contacting layer. (Spec. Page 5, Lines 2-6) The absorbent core has a core edge (FIG. 1, Ref. No. 51, Spec. Page 5, Lines 10-11). The core edge defines a core region (FIG. 1, Ref. No. 25) within the core edge and an outer region (FIG. 1, Ref. No. 26) outside the core region. (Spec. Page 5,

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Lines 11-14) The body contacting layer and the garment contacting layer extend outward into the outer region and joined together in the outer region. (Spec. Page 5, Lines 21-25) In one aspect of the invention, the garment contacting layer has a graphic (FIG. 1, Ref. No. 65) printed on the body facing surface (FIG. 1 and 2, Ref. No. 22) at least in a portion of the outer region. (Spec. Page 5, Lines 27-28) In another aspect of the invention, the body contacting layer has a graphic printed on the garment facing surface (FIG. 1 and 2, Ref. No. 24) at least in a portion of the outer region. (Spec. Page 5, Lines 22-24) The body contacting layer has a first light transmittance so that the graphic can be seen through the body contacting layer in the outer region. (Spec. Page 8, Lines 4-8)

#### GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1 – 14 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Jordan et al. (U.S. Patent Pub. No. 2001/0031954)(hereafter Jordan) in view of Haarer et al. (U.S. Patent No. 6,482,192)(hereafter Haarer).

#### ARGUMENTS

Claims 1 – 14 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Jordan et al. (U.S. Patent Pub. No. 2001/0031954)(hereafter Jordan) in view of Haarer et al. (U.S. Patent No. 6,482,192)(hereafter Haarer).

To establish a case of *prima facie* obviousness, the Office must show a motivation to combine and modify the references in the manner claimed and a reasonable expectation of success resulting from the combination and modification. This suggestion of the desirability of the combination and modification must come from the teachings of the prior art itself and not from the Applicant's own disclosure. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). The Office has not established a *prima facie* case of obviousness because there is no evidence of a motivation to combine the references.

The mere fact that the references can be combined does not render the invention obvious, unless the prior art also suggests the desirability of the combination. Jordan teaches a training pant with graphics that are disposed on the outer cover. The teachings

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of Jordan are focused on registered outer cover graphics and wetness indicating graphics. (Page 6, Para 0077). Thus, Jordan teaches graphics that are visible on the exterior of the garment, rather than visible on the interior of the garment. Further, Jordan teaches a light transmittance in relation to the outer cover only and does not refer to a light transmittance on the interior of the garment. Haarer teaches an absorbent article in which the cover and backsheet are made from pigment-free materials in order to have a transparent periphery to allow for the articles to not be discernible.

Neither Jordan nor Haarer teach or suggest the placement of graphics on the interior of a garment in combination with the limitation that the graphics are visible to the wearer of the garment. A combination of Jordan with Haarer would not lead one of ordinary skill to the claimed invention. A combination of Jordan and Haarer, as proposed by the Action, would result in a diaper utilizing pigment free material. Thus, no graphics would appear in the resulting combination as graphics are made via pigments. This resulting combination of Jordan and Haarer is not the claimed invention. In the absence of evidence that suggests the desirability of combining references in a proposed manner, such combination is not available to preclude patentability under 35 U.S.C. § 103. *King Instrument Corp. v. Otari Corp.*, 767 F.2d 853 (Fed. Cir. 1985). There is no evidence presented in the Office Action of the reasoning why an artisan reviewing only the collective teachings of the references would have found it obvious to selectively pick and choose various elements and/or concepts to result in the claimed invention. Therefore, it is respectfully submitted that the rejection is improper and should be reconsidered and withdrawn.

Even if the references are properly combinable, which Appellants contend is not the situation, the references teach away from the current invention. For instance, since Jordan teaches graphics that are visible on the exterior of the article, the reference teaches away from printing on the interior of the outer cover where the graphics are visible on the interior of the article. Jordan also fails to teach printing graphics on the garment facing surface of the bodyside liner in which the graphics are visible on the interior of the article. Haarer does not remedy the teaching away of Jordan. Haarer, itself, teaches away from the claimed invention. Haarer teaches away from the use of pigmented materials and specifically requires the materials to be pigment free. As Haarer teaches using pigment free materials, Haarer is teaching away from the use of graphics all-together as graphics would be made via pigments. It is well known that "a reference may be said to teach away...if it suggests that the line of development flowing from the reference disclosure is

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unlikely to be productive of the result sought by the applicant." *Tec Air Inc. v. Denso Manufacturing Michigan Inc.*, 192 F.3d 1353 (Fed. Cir. 1999). Based on this apparent teaching away by both Jordan and Haarer, Appellants request reconsideration and withdrawal of the rejection.

SUMMARY

In view of all of the above, it is respectfully submitted that the claims be allowed on appeal.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



Signature

James E. Oehlenschlager

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## CLAIMS APPENDIX

1. (Previously Presented) An absorbent article, comprising:
  - a body contacting layer;
  - a garment contacting layer; and
  - an absorbent core disposed between the body contacting layer and the garment contacting layer, the absorbent core having a core edge;

the core edge defining a core region within the core edge and an outer region outside the core region;

the body contacting layer and the garment contacting layer extending outward into the outer region and joined together in the outer region;

the garment contacting layer having a graphic printed on a body facing surface at least in a portion of the outer region; and

the body contacting layer having a first light transmittance so that the graphic printed on the body facing surface of the garment contacting layer can be seen through the body contacting layer in the outer region.
2. (Previously Presented) An absorbent article, comprising:
  - a body contacting layer;
  - a garment contacting layer; and
  - an absorbent core disposed between the body contacting layer and the garment contacting layer, the absorbent core having a core edge;

the core edge defining a core region within the core edge and an outer region outside the core region;

the body contacting layer and the garment contacting layer extending outward into the outer region and joined together in the outer region;

the body contacting layer having a graphic printed on a garment facing surface at least in a portion of the outer region; and

the body contacting layer having a first light transmittance so that the graphic printed on the garment facing surface of the body contacting layer can be seen through the body contacting layer in the outer region.

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3. (Previously Presented) The absorbent article of the claim 1, wherein the garment contacting layer has a second light transmittance so that the graphic on the body facing surface can be seen through the garment contacting layer.
4. (Previously Presented) The absorbent article of the claim 1, wherein the first light transmittance is at least about 10%.
5. (Previously Presented) The absorbent article of the claim 3, wherein the second light transmittance is at least about 10%.
6. (Previously Presented) The absorbent article of the claim 3, wherein the difference between the first and second light transmittances is less than about 70%.
7. (Previously Presented) The absorbent article of the claim 3, wherein the difference between the first and second light transmittances is greater than about 10%.
8. (Previously Presented) The absorbent article of the claim 1, wherein the absorbent article has a Hunter Lab Total Color Difference between the outer region and the core region of about 0.5-73.
9. (Original) The absorbent article of the claim 2, wherein the body contacting layer includes a liquid permeable topsheet layer disposed in the core region, and a graphic protection layer disposed in the outer region,  
the graphic protection layer has the graphic printed on the garment facing surface, and  
the graphic protection layer has the first light transmittance so that the graphic printed on the garment facing surface of the graphic protection layer can be seen through the graphic protection layer in the outer region.
10. (Previously Presented) The absorbent article of the claim 1, wherein the core edge of the absorbent core includes longitudinal side edges and lateral end edges, and the outer region is disposed outside the longitudinal side edges of the absorbent core.

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11. (Previously Presented) The absorbent article of the claim 1, wherein the core edge of the absorbent core includes longitudinal side edges and lateral end edges, and the outer region is disposed outside the lateral end edges of the absorbent core.
12. (Previously Presented) The absorbent article of the claim 10, wherein the body contacting layer and the garment contacting layer extend outward into the outer region to form a flap.
13. (Original) The absorbent article of the claim 1, wherein the body contacting layer includes a liquid permeable topsheet layer disposed in the core region, and a graphic protection layer disposed in the outer region.
14. (Previously Presented) The absorbent article of the claim 1, wherein a graphic protection layer has a hydrophobic nature to prevent body fluids discharged at the topsheet layer from wicking therethrough.

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#### EVIDENCE APPENDIX

No evidence is being submitted with this Appeal Brief.

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#### RELATED PROCEEDINGS APPENDIX

No decisions have been rendered by a court or board in any proceeding identified pursuant to 37 C.F.R. 41.37 (c)(1)(ii).